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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALEX MASHINSKY and
CHI K. ENG

Appeal 2009-014622
Application 09/939,917
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Alex Mashinsky et al. (Appellants) seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-8 and 10-21. We have jurisdiction under 35 U.S.C. § 6(b) (2002). Claim 9 has been cancelled.

SUMMARY OF DECISION

We REVERSE.²

THE INVENTION

This invention is “a method and system for the trading of electricity services and dynamic routing of electric power based on settled trades.” Specification 1:7-9.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method for dynamically trading and distributing electric power, comprising the steps of
 - (a) collecting by a control node bids and asks from buyers and sellers of electric power;
 - (b) dynamically matching by the control node the collected bids and asks to form matches;
 - (c) receiving by the control node information related to current supply and demand conditions on an electric network through a feedback loop;
 - (d) generating, by the control node, a route plan for routing electricity between the matched

² Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed Dec. 29, 2008) and Reply Brief (“Reply Br.,” filed Jun. 15, 2009), and the Examiner’s Answer (“Answer,” mailed Apr. 14, 2009).

buyer and seller and for simultaneously balancing loads and resources of the electric network based on the supply and demand conditions received through the feedback loop; and
(e) configuring the electric network to route electric power in response to the control node in accordance with the route plan.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Iino	US 5,873,251	Feb. 23, 1999
Johnson	US 6,598,029 B1	Jul. 22, 2003

The following rejection is before us for review:

1. Claims 1-8 and 10-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Johnson and Iino.

ISSUE

The issue is whether claims 1-8 and 10-21 are unpatentable under 35 U.S.C. § 103(a) over Johnson and Iino. Specifically, the issue is whether Johnson teaches that a control node that does all of: 1) receiving the bids and asks, 2) matching the bids and asks and 3) generating a route plan for delivering electricity between matched buyer and sellers.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v.*

Quigg, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Johnson describes that the moderator sorts bids among delivery destinations, such as a grid interface at the end user's DISCO, or particular providers. *See* col. 6, ll. 43-50 and col. 12, ll. 18-24.
2. Johnson states:

Before this power can be delivered to the buyer at the agreed transfer point, the seller must schedule a "contract path" for this power to travel from the seller's generating facility (or the point at which the seller is to take title if the seller purchased this power from another source) to the transfer point. The buyer must, in turn, schedule a transmission path from the transfer point to the buyer's own grid interface (if the buyer, for example, is a local distribution utility) or, if the buyer is reselling this power to another party, to a transfer point agreed to buy such other party. Scheduling contract or transmission paths is usually coordinated through the regional grid controller(s) for the power grids over which this power is to be transmitted.

Col. 3, l. 62-col. 4, l. 10.

3. Johnson states:

If a Provider is selected as the winning bidder, the Provider will be responsible to schedule the delivery of its power or natural gas to the end user's DISCO during the period stipulated. For example, such a selected Provider of electric power will notify the regional grid controllers of the utility grids between the provider's point of generation, and the grid interface of the end user's DISCO that the Provider intends to ship power over their power grids.

Col. 16, ll. 49-56.

ANALYSIS

The issue is whether Johnson's moderator/control computer, which receives and matches the bids and asks, also generates a route plan for delivering electricity between matched buyers and sellers as required by independent claims 1 and 15. The Appellants argue that Johnson does not disclose a control node that performs all three of the recited functions (App. Br. 5; *see also* Reply Br. 1-2) and that Johnson's moderator/control computer, while receiving and matching bids and asks, does not generate a route plan to deliver electricity. App. Br. 5-6. The Appellants state: "Johnson discloses a two step process in which the Moderator/Control Computer first selects the Provider to supply end users and then the selected Provider determines a route with a local grid operator (col. 16, lines 49-57)."

The Examiner relies upon Johnson's moderator/control computer to teach the claimed control node. *See* Answer 4 and 6-8. In the rejection, the Examiner cites column 6, lines 43-50 and column 12, lines 18-24 of Johnson as teaching generating a route by a control node and states: "moderator sorts bid information among delivery destinations." Answer 4. The Examiner also cites column 3, line 53 through column 4, line 16, which describes providers or buyers scheduling a transmission path for electricity (FF 2), to teach a control node that is configured to generate a route plan. *Id.* Further, in response to the Appellants argument, the Examiner quotes portions of Johnson that describe the moderator/control computers sorting the bid data and selecting a provider. *See* Answer 6-7.

We agree with the Appellants. We fail to see how Johnson's teaching that the moderator/control computer can sort bid data according to the destination and can select a provider (FF 1) teaches a control node that

generates a route plan as in claim 1 or that is structured to be capable of generating a route plan as in claim 15. Further, we agree with the Appellants that Johnson teaches that the provider or buyer determines a route with a local grid operator and not the moderator/control computer. *See* FF 2-3. We note that the Examiner does not include any other explanation of how this limitation is taught (*see* Answer 6-8) and did not rely upon Iino to teach this limitation (*see* Answer 4-5). Therefore, we find that the Examiner has not established that Johnson teaches the limitations at issue.

Accordingly, the Appellants have overcome the rejection of claim 1 and 15, and claims 2-8 and 16-21, dependent thereon, under 35 U.S.C. § 103(a) over Johnson and Iino.

DECISION

The decision of the Examiner to reject claims 1-8 and 10-21 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REVERSED

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Application 09/939,917

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